



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 21 2017

Kerry D. Bowers

Henderson, NV 89002-0522

RE: MUR 7230

Dear Mr. Bowers:

The Federal Election Commission reviewed the allegations in your complaint received on April 3, 2017. On June 14, 2017, based upon the information provided in the complaint, and information provided by the respondents, the Commission found that there is no reason to believe that National Public Radio, Inc., and Audie Cornish, violated the Federal Election Campaign Act of 1971, as amended, or Commission regulations with respect to the allegations in this matter. Accordingly, the Commission closed its file in this matter on June 14, 2017.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A copy of the Factual and Legal Analysis is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: National Public Radio
Audie Cornish

MUR 7230

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by National Public Radio ("NPR") and Audie Cornish (collectively, "the Respondents"). It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that the Respondents violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations, claiming that the Respondents made a contribution to the presidential campaign of Senator Ted Cruz by reporting on Cruz's announcement of his candidacy on March 23, 2015, and characterizing Cruz as the first Republican to announce a presidential candidacy and the first "official" candidate for President in 2016. Compl. at 1-3. The Complainant states that he had announced his campaign as a Republican Presidential candidate on September 13, 2013; and claims that NPR's reference to Cruz as the first Republican candidate led listeners and readers to believe that no other candidates existed at the time.¹ *Id.* at 1, 2.

¹ Complainant Kerry Dale Bowers filed a Statement of Candidacy with the FEC on April 28, 2014, and Kerry Bowers for President ("the Bowers Committee") filed a Statement of Organization on May 5, 2014. The Bowers Committee raised and spent a total of \$1,868, which falls below the \$5,000 minimum threshold to become a candidate under the Act and Commission regulations. See 52 U.S.C. § 30101(2). The Bowers Committee's request for termination was approved on October 8, 2015. The Complaint also states that fifty-five other Republican candidates had filed Statements of Candidacy with the FEC prior to the Cruz filing. According to FEC filings, only eight of those fifty-five candidates reported raising or spending more than \$5,000 during the campaign, and none

1 The Respondents state that they are members of the media whose radio and digital
2 reports fall squarely within the Act's media exemption. Comp. Resp. at 1. Respondents further
3 state that NPR is an independent media organization that is not owned or controlled by a
4 political party, political committee, or federal candidate. *Id.* at 1. Alternatively, Respondents
5 argue that its independent speech would not constitute an in-kind contribution, nor would
6 merely reporting on Cruz's announcement, without express advocacy, qualify as an independent
7 expenditure. *Id.* at 1-2.

8 **B. Legal Analysis**

9 The Act and Commission regulations exclude from the definitions of "contribution"
10 and "expenditure" the cost incurred in covering or carrying a news story, commentary, or
11 editorial by any broadcasting station, newspaper, Web site, magazine, or other periodical
12 publication, including any Internet or electronic publication, unless such facilities are owned or
13 controlled by any political party, political committee, or candidate.²

14 The Commission uses a two-step analysis to determine whether the media exemption
15 applies. First, the Commission considers whether the entity in question is a media entity,
16 focusing on whether the entity produces, on a regular basis, a program that disseminates news
17 stories, editorials, and/or commentary.³ Second, the Commission considers two factors in
18 determining the scope of the exemption: (1) whether the press entity is owned or controlled by a
19 political party, political committee, or candidate; and, if not, (2) whether the media entity is

were among the seventeen Republican candidates that were involved in the Republican Party's 2015-2016 Presidential debates and forums. The Complainant concludes that the radio announcement was fabricated and limited his ability to raise funds or retain the status he had prior to the Respondents' news segment.

² See 52 U.S.C. § 30101(9)(B)(i); see also 11 C.F.R. § 100.73 (excluding *bona fide* news coverage from the definition of "contribution"); 100.132 (same as to the definition of "expenditure").

³ See Advisory Opinions 2010-8 (Citizens United); 2005-16 (Fired Up!); and 1996-16 (Bloomberg).

1 acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its
2 “legitimate press function”).⁴ With respect to the second factor, when determining whether an
3 entity is engaging in a legitimate media function, the Commission examines (1) whether the
4 entity’s materials are available to the general public; and (2) whether they are comparable in
5 form to those ordinarily issued by the entity.⁵

6 It is unrefuted, and the record indicates, that NPR produces news stories on a regular
7 basis; it is not owned or operated by a political party, political committee, or candidate; and when
8 it disseminated the news story at issue, it was operating within its legitimate press function.
9 Therefore, NPR’s activities in this matter fall within the media exemption, and the Commission
10 finds no reason to believe that the Respondents violated the Act and Commission regulations.

⁴ See *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

⁵ *Id.*